

1 BEFORE THE POLLUTION CONTROL HEARINGS BOARD
2 STATE OF WASHINGTON

3 SNOHOMISH COUNTY-CAMANO BOARD)
4 OF REALTORS,)

5 Appellant,)

6 v.)

7 PUGET SOUND AIR POLLUTION CONTROL)
8 AGENCY,)

9 Respondent.)

PCHB No. 89-159

ORDER OF DISMISSAL

9 On December 12, 1989 the Snohomish County-Camano Board of
10 Realtors ("Realtors") filed an appeal with the Pollution Control
11 Hearings Board ("PCHB") contesting the Puget Sound Air Pollution
12 Control Agency's ("PSAPCA") amendment of Section 8.02(b) and (c) of
13 Regulation I (Delineation of No Burn Zone).

14 On December 22, 1989, the PCHB set a schedule for filings on
15 whether this Board had jurisdiction to hear this appeal.

16 The Board has considered the following in reaching its decision.

- 17 1. The appeal;
18 2. PSAPCA's letter filed December 22, 1989;

1 of orders issued pursuant to the Clean Air Act, Chapt. 70.94 RCW at
2 .211 and .322. These sections of the Clean Air Act deal with orders
3 issued for violating the Act, which is not the issue in this case.
4 Subsection 1(c) provides for appeals of the issuance, modification or
5 termination of any permit, certificate or license by the Department of
6 Ecology or any air authority. Clearly the adoption of a regulation is
7 not a permit, certificate or license.

8 RCW 43.21B.110 at Subsection 1(e) provides jurisdiction to this
9 Board over any other decision by an air authority which must be
10 decided as an adjudicative proceeding under Chapt. 34.05 RCW (the
11 Administrative Procedure Act ("APA").) The APA clearly distinguishes
12 between rule-making procedures (Part III), and adjudicative
13 proceedings (Part IV).

14 An "adjudicative proceeding" is defined at RCW 34.05.010 in
15 relevant part to require the entry of an order by the agency. An
16 "order" is defined at RCW 34.05.010

17 (10)(a): a written statement of particular applicability
18 that finally determines the legal rights, duties,
19 specific person or persons. [Emphasis added.]

20 In contrast a "rule" means any agency order, directive, or regulation
21 of general applicability. RCW 34.05.010(15).

22 Clearly PSAPCA's adoption of an amendment to Section 8.02(b) and
23 (c) of Regulation I is rule making (RCW 34.05.110(17)), and is not an
24

1 adjudicative proceeding under the APA as referenced in RCW
2 43.21B.110(1)(e).
3

4 III

5 There has been presented no convincing legal argument that the
6 Board has necessarily implied jurisdiction to hear a facial challenge
7 to PSAPCA's regulation. To the contrary, such challenge properly
8 belongs in a different arena, Superior Court.

9 IV

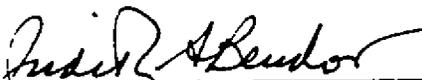
10 Because we reach this conclusion, we need not and do not address
11 respondent PSAPCA's argument about timely service of the appeal.

12 ORDER

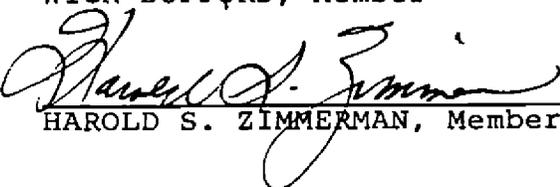
13 This appeal is DISMISSED.

14 DONE this 10th day of February, 1990.

15 POLLUTION CONTROL HEARINGS BOARD

16 
17 JUDITH A. BENDOR, Chair

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19 WICK DUFFORD, Member

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21 HAROLD S. ZIMMERMAN, Member
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